UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: | Chapter 11

261 East 78 Lofts LLC, | Case No. 16-11644 (SHL)

Debtor.

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261 East 78 Lofts LLC, | Adversary Proceeding No. 16-_______ (SHL)

Plaintiff,

-against-

Tax Commission of the City of New York,

Defendant.

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COMPLAINT

The plaintiff, 261 East 78 Lofts LLC (the "Debtor") as and for its Complaint against the defendant, the Tax Commission of the City of New York (the "City"), represents and shows this Court as follows:

JURISDICTION AND VENUE

1. The Debtor brings this adversary proceeding pursuant to Sections 105 and 505(a) of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 7001, et. seq., of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201, et seq., obtain a redetermination and reduction of the assessed values of the Debtor's building retroactive to 2014-2015 and continuing into the future, together with a corresponding reduction of real estate taxes for tax years 2014-2015, 2015-2016, plus the current tax year 2016-2017.

2. This adversary proceeding is a "core" proceeding pursuant to 28 U.S.C. Sections 1334 and 157(b)(2)(A), (B) and (O) directly arising under Sections 105 and 505 of the Bankruptcy Code. Accordingly, the Bankruptcy Court has constitutional authority to enter a final judgment herein.

PARTIES

3. The Debtor is a New York limited liability company which filed for relief under Chapter 11 of the Bankruptcy Code on June 3, 2016, and thereafter has continued in possession and management of its property as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

4. The City is a municipal corporation organized under the laws of the State of New York.

BACKGROUND FACTS

5. The Debtor owns the commercial real property located at 261 East 78th Street, New York, NY (Block 1433, Lot 21), consisting of a six-story office building occupied by doctors and medical service providers (the "Building").

6. The City has asserted outstanding tax claims and liens against the Property in the total sum of approximately $776,000 as of June, 2016, covering the periods after July 1, 2014 to the present, but excluding the current tax year (the "Taxes").

7. The Taxes are based upon the following real estate assessments (the "Assessments") itemized as follows:

	2014-2015	2015-2016	2016-2017
Assessed Value Land	$1,574,550	$1,574,550	$1,574,550
Assessed Value Building	$1,378,800	$1,543,500	$1,612,350
Assessed Value Total	$2,953,350	$3,118,050	$3,186,900
Taxes	$304,874	$317,832	$304,512

8. The Assessments are overvalued and erroneous, and should be reassessed downwards for, inter alia, the following reasons:

a. The Assessments are based upon the erroneous belief the Building is larger than it actually is in terms of square footage;

b. The Assessments are based upon phantom income at levels which significantly exceed the Debtor's actual annual rent rolls for the Building;

c. The Assessment does not include allowed deductions for amortization on tenant improvements, leasing commissions and professional fees.

9. In view of these miscalculations, the total Assessments should be reduced as follows based upon net income of $378,138 (2015-2016) and $491,474 (2016-2017) at a 13.80%[1] rate.

Years	**Reduced Total Assessments**
2014-2015	$1,200,000
2015-2016	$1,233,000
2016-2017	$1,607,492

[1] 13.80% is the sum of the cap rate (9.8%) and 45% of the Tax Rate

10. The reduced assessments are also consistent with the assessed values of comparable commercial properties in the area, which generally have total taxes of no more than $150,000 based upon a total assessments consistent with the Debtor's analysis and work sheets a copy of which is annexed hereto as Exhibit "A".

11. Moreover, the Debtor's current total assessment of more than $3 million on the Debtor's Building equates to a property value of approximately $50 million, which is more than double the actual fair market value of the Building.

12. The improper Assessments are hindering the Debtor's ability to obtain a buyer for the Buyer at going concern value and threatens the viability of the Chapter 11 case.

13. There has been no prior final determination of the assessed value of the Building prior to bankruptcy, although the Debtor filed an application for a reduction which the City did not act upon due to the existence of outstanding taxes.

14. The Debtor not only seeks a reduced assessment for current and future taxes, but also seeks to reduce the existing tax liens and claims for the prior tax years 2014-2015, 2015-2016 and 2016-2017 to the total sum of approximately $420,000.

<u>AS AND FOR A FIRST CLAIM FOR RELIEF</u>

15. The Debtor repeats and realleges the allegations contained in paragraphs "1" through "13" above as though more fully set forth at length herein.

16. Pursuant to the provisions of 11 U.S.C. §505(a), the Bankruptcy Court has the authority to reassess and redetermine the Debtor's tax liability by reducing the assessed value of the Building for the periods in question as set forth above.

17. In turn, the Bankruptcy Court has the authority to make a corresponding reduction in the accrued tax claims and liens in the reduced total sum of approximately 420,000 for the prior years.

18. That based upon consideration of all relevant factors, the Debtor's Taxes should be substantially reduced based upon a reduction of the assessed value of the Building.

WHEREFORE, the plaintiff/Debtor prays for judgment against the Defendants consistent with the foregoing, together with such other and further relief as is just and proper.

Dated: New York, New York
October 20, 2016

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By: ______________________
KEVIN J. NASH
A Member of the Firm

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EXHIBIT "A"

WORK - UP (CLASS 4)

Prepared By:		**OK TO FILE AF:**	
Date:			
Updated On:		**DATE:**	
		RJI YEAR:	

BBL: M/1433/21
ADDRESS:
PETITIONER:
CLIENTID:
TAX YEARS UNDER REVIEW: 2015/2016 and 2016/2017
Res. Income/Sq. Ft.
Expenses/Sq. Ft.

YEAR END	2014	2015			
TOTAL INCOME	**$588,148.00**	**$853,335.00**			
TOTAL EXPENSES	**$220,890.00**	**$987,494.00**			
LESS EXCLUSIONS	-$34,406.00	-$659,767.00			
PLUS MGMT. FEE (4%)	$23,525.92	$34,133.40			
NET EXPENSES	$210,009.92	$361,860.40			
PRE-TAX NET INCOME	$378,138.08	$491,474.60			
NET RETURN %	**1.47%**	**4.85%**			

Corrected AV = (Pre-Tax Net / (Cap Rate + [Tax Rate * Ratio])) * Ratio

ENTER Tax Rate	10.656%	10.574%			
ENTER Cap Rate	9.00%	9.00%	9.00%	9.00%	9.00%
ENTER the Ratio	45.00%	45.00%	45.00%	45.00%	45.00%
Tax Rate x Ratio	4.80%	4.76%			
CORRECTED AV	**1,233,488**	**1,607,492**			
ACTUAL ASSESSMENT	**3,118,050**	**3,186,900**			
POTENTIAL EXPOSURE	1,884,562	1,579,408			
60% OF EXPOSURE	1,130,737	947,645			
CORRECTED AV @ 60%	**1,987,313**	**2,239,255**			
40% OF EXPOSURE	753,825	631,763			
CORRECTED AV @ 40%	**2,364,225**	**2,555,137**			

% OF R & M TO TTL INCOME	10.89%	9.36%			
TTL R & M + C/I AMORTIZATION	$64,068.00	$79,830.00			
% OF R & M/AMORT TO INCOME	10.89%	9.36%			